86-1209

Supreme Court, U.S.
FILED
JAN 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

NO.

APPENDIX FOR PETITIONER

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1986

SAM POLUR,

Petitioner,

- against -

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERITORARI

TO THE APPELLATE DIVISION, FIRST

JUDICIAL DEPARTMENT, NEW YORK STATE

SUPREME COURT

APPENDIX FOR PETITIONER

SAM POLUR, Esq.
Attorney, Pro Se for
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57pp

No._____

APPENDIX FOR PETITIONER

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SUPREME COURT OF THE UNITED STATES

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SAM POLUR,

Petitioner,

v.

THE STATE OF NEW YORK, HON. ALVIN F. KLEIN, Justice, Supreme Court State of New York,

Respondents.

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At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on October 7, 1986

Present -- Hon. Leonard H. Sandler, Justice Presiding

Arnold L. Fein
Ernst H. Rosenberger
Betty Weinberg Ellerin
Richard W. Wallach, Justices

HYMAN RAFFE,

Plaintiff,

- against -

XAVIER C. RICCOBONO, DONALD DIAMOND FELTMAN, KARESH & MAJOR, ESQS. and KREINDLER & RELKIN, P.C.,

Defendants.

M-4304

HYMAN RAFFE,

Plaintiff,

- against -

KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "JOHN DOE", and JOHN ROE," names fictitious, persons intended to be those who communicated with the Court ex parte,

Defendants.

HYMAN RAFFE,

Plaintiff,

- against -

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., KREINDLER & RELKIN, P.C., CITIBANK, N.A., and JEROME H. BARR, ESQ., individually and as Executor of the Will of Milton Kaufman,

Defendants.

[M-4304]

A motion having been made by Sam Polur, Esq., for reargument of the order of this Court [M-3667/M-3786] entered on August 21, 1986,

Now, upon reading and filing the papers with respect to said motion; and due deliberation having been had thereon,

It is ordered that said motion be and the same hereby is denied, with $20 costs.

ENTER:

HAROLD J. REYNOLDS
Clerk.

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:FIRST JUDICIAL DEPARTMENT

HYMAN RAFFE,

Plaintiff,

- v -

XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN KARESH & MAJOR, ESQS., and KREINDLER & RELKIN, P.C.,

Defendants.

Index No.9522/85
(New York County)
M-3367; 3786
(First Department)

HYMAN RAFFE,

Plaintiff,

- v -

KREINDLER & RELKIN, P.C., HON WALTER W. SHACKMAN, "JOHN DOE" and "JOHN ROE", names fictitious, PERSONS INTENDED TO BE THOSE WHO COMMUNICATED WITH THE COURT EX PARTE,

Defendants.

NOTICE OF MOTION

HYMAN RAFFE,

Plaintiff,

- v -

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., CITIBANK, N.A., and JEROME H. BARR, ESQ. Individually and as EXECUTOR OF THE WILL OF MILTON KAUFMAN,

Defendants.

PLEASE TAKE NOTICE, that upon the order entered herein on the 21st day of August, 1986 denying the motion for Leave to Appeal denial of a Coram Nobis,C.P.L. 440.10, Petition and upon the papers on which said order was granted and upon the annexed Motion and Affirmation of SAM POLUR, Esq., Attorney Pro Se, a motion will be made at a Motion Term of this Court to be held in and for the Supreme Court of the Appellate Division, First Judicial Department at the Courthouse thereof located at 27 Madison Avenue, New York, New York on the 25th day of September, 1986 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel, Pro Se can be heard for leave to reargue the said motion to have this Court issue a Certificate granting Leave to Appeal the denial of an application for Coram Nobis relief, CPL §440.10, and in the event such leave is granted that such reargument then and there proceed and for such other further and different relief as to the Court may seem just

and proper in the premises.

Dated: September 12, 1986.

SAM POLUR
Attorney at Law,
Pro Se
391 East 149 Street
Bronx, New York 10455
(212) 402-6497

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:FIRST JUDICIAL DEPARTMENT

HYMAN RAFFE,

Index No. 9522/85

Plaintiff, (New York County)
M-3367; 3786
- v - (First Department)

XAVIER RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, ESQS., and KREINDLER & RELKIN, P.C.,

Defendants.

HYMAN RAFFE,

Plaintiff,

- v -

KREINDLER & RELKIN, P.C., HON. WALTER M. SHACKMAN, "JOHN DOE" and "JOHN ROE", names fictitious, PERSONS INTENDED TO BE THOSE WHO COMMUNICATED WITH THE COURT EX PARTE,

Defendants.

HYMAN RAFFE,

Plaintiff,

- v -

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., CITIBANK, N.A., and JEROME H. BARR, ESQ. Individually and as EXECUTOR OF THE WILL OF MILTON KAUFMAN,

Defendants.

MOTION TO REARGUE

MOTION TO REARGUE AND AFFIRMATION IN SUPPORT OF MOTION TO REARGUE

SAM POLUR, an attorney duly licensed to practice law before the courts of this state, on the basis of this affirmation and all prior proceedings and documents filed herein, moves to reargue the decision of this Court dated August 21, 1986, denying leave to appeal from the denial of Polur's petition pursuant to CPL 440.10(1)(a)(b)(g) and (h), and, in support of said motion reargue pursuant to CPLR 2106 and the penalties of perjury, affirms and says:

A Case of First Impression

(1) Denial of Polur's Coram Nobis petition and denial of review by this Court absent a word of explication for such a decision presents a case of first impression in the courts of this state by implicitly approving in this state the following medieval practices:

(a) imprisonment without trial;
(b) conviction without accusatory instrument;
(c) conviction without evidence;
(d) conviction without presentation of testimony and without confrontation;

(e) criminal monetary fines made payable to private litigants;

(f) criminal prosecution by private litigants and not by the state;

(g) use of criminal process to gain civil litigation ends;

(h) criminal trial by affidavit;

(i) criminal jurisdiction over an accused without a special proceedings as required by statute;

(j) denial of a coram nobis hearing as required by statute and case law; and

(k) judicial misconduct in participating in all of the foregoing conduct.

(2) Penal servitude in our nation was always predicated on a trial where a presumptively impartial judicial officer conducted an evidentiary hearing, took testimony under oath, where the accused was permitted to attack that evidence and produce, if he chose, a case of his own. No one has asserted these fundaments took place in this case. No one has denied that a criminal contempt conviction was had on mere affidavits - in a case where Polur was not a party, where no jurisdiction was ever

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acquired over Polur by any legal means or mechanism.

(3) DID THIS OCCUR IN THE UNITED STATES OF AMERICA, IN NEW YORK, UNDER EXISTENT NEW YORK STATE AND UNITED STATES CONSTITUTIONS? Lamentably, the answer is yes. Oddly, this Court sits mute in the face of Polur's being denied elementary constitutional protections granted to the meanest criminal, to the most vicious and depraved among us irrespective of the heinous charge. As a Social Polity we rightly pride ourselves on such accused individuals having their rights scrupulously protected. But this enlightened Constitutional Tribunal is silent while a member of its own Bar is publicly pilloried and jailed without indictment, hearing, accusation, confrontation, counsel or evidence. This is initiated and openly effectuated by lawyers seeking private gain from a criminal conviction; by lawyers with not a scintilla of prosecutorial standing. The Court is directed as a puppet. A powerful and wealthy private lawfirm manipulates Judicial oppression and acts in tandem with a Constitutional Justice in violence of basic and fundamental protections of law.

(4) Indisputably, Civil Rights Law §12, inter alia, was abjured and violated. It reads: "§12. Rights of persons accused of crime - - In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor. ..." Not one iota of that civilized standard was observed.

(5) Polur's "crime" was indigenous to the Totalitarian State: representing a then-unpopular client; working with an unpopular (and much derided colleague). He became, unwittingly, the dupe of both client and colleague as they sought to embroil Polur in the dead sins of year-long litigation that Polur became involved in at five minutes to midnight.

(6) Polur's offense was allegedly serving a single summons where he merely acted as a process server; had not seen, drawn up, advised or legally concerned himself with such legal document. He violated thereby, allegedly, an injunction of a

Judge with which Polur had no legal attenuation, and at that time, was unaware such alleged "violation" was occuring. Instructively, it is undisputed that at the time of his allegedly contemptuous service of a single summons the injunction was never served upon Polur. Incredibly, that alleged summons has never been submitted to the Court as having been served upon the Lawfirm which acted as public prosecutors!

(7) There is not a single case in the history of New York jurisprudence where a criminal defendant was incarcerated without a charge, without a trial, without presentation of evidence, without testimony under oath, without even the feeble confrontation of the least prepared pro se defendant.

The Public "Prosecutor" Makes No Rejoinder

(8) The District Attorney of New York County, the public prosecutor, has had, since the inception of this criminal conviction and jailing, no know-

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ledge of the matter nor an interest in the case. The startling fact of the public prosecutor's lack of involvement in this criminal contempt conviction and jailing is before this Court. It is undenied by the private-attorney prosecutors. The sentencing and conviction Court remains indifferent to these Constitutional abberations.

(9) Both in this Court and before the trial court the private-attorney prosecutors have not denied a single allegation of fact or law and have not rebutted a single contention that conclusively reveal that Polur's conviction was unconstitutionally obtained; that his jailing was an unparralleled State action in New York, Kafkesque, Totalitarian, Unprincipled.

(10) In the face of those admissions of constitutional infirmities this Court sits silent, apparently circling the wagons about Justice Klein and the private-attorney prosecutors by validating their illegal conduct with a mantle of silence and silent approval.

(11) If must be pondered: What authority exists for this Court to approve incarceration without trial, confrontation or proof? What authority exists that validates the trial court's refusal to grant a statutorily and constitutionally mandated coram nobis hearing after having failed to assure that the accused and convicted and sentenced, duly licensed Attorney had the basic protections of accusatory instrument, trial, confrontation and proof beyond a reasonable doubt? If such authority does not exist that justifies Polur's criminal conviction and jailing, and the treatment accorded him before the courts of the State of New York, why does this Court sit silent?

Guilt by Association

(12) From the very inception of Polur's retention by Hyman Raffe he has been heaped with scurrilous abuse by the private-attorney prosecutors. No act has been too low, no falsehood too great but that the private-attorney prosecutors -- clearly immunized from the necessity of proof --

repeated them ad nauseum until they proved Dr. Goebbels' Big Lie postulate and their falehoods, in uncritical Judicial circles become sanctified as truths. Sadly, some of the Big Lies the private-attorney prosecutors told about Polur were true; not of Polur, however, but of George Sassower.

(13) The private-attorney prosecutors were not deterred by the fact that the main burden of the allegations they sought to lay at Polur's door antedated Polur's representation of Raffe by as much as five years! Typically, in Court pleadings and by oral denunciation they repeatedly stated Polur had engaged in "200 motions" of an oppressive character. Participation in "five motions" of the representative character cited would be difficult to establish by credible evidence! No court has troubled the private-attorney prosecutors with a demand for evidence. No record that contains evidence exists. Through it all this Court and Justice Klein sit silent. No evidence is needed: the legal confluence of Polur and Goerge Sassower,

Esq., merely being "on the same side of the case," suffices. What further evidence exists: None. But this Court sits silent. The private-attorney prosecutors have stated we are the sole explicators of the facts. We need not trouble to have trials. We need not adduce evidence. Our perjured affidavits are sufficient. Our testimony under oath, subject to cross-examination and penalties of perjury,you will never achieve. We have a number of key Justices and key Judicial figures under our control. We have the money, the power, the will and the audacity to destroy a practicing Attorney at Law through perjured affidavits. We are never going to be challenged. We can get a fortune from Hyman Raffe for him to avoid imprisonment for criminal contempt. No one challenges us.

The Appearance of Impropriety

(14) It is clear the motives of the private-attorney prosecutors are to be deemed inconsequential. Having disposed of Raffe's lawyers - and collaborating with Raffe's present lawyer who boasts of his unique "winning" capabilities - these lawyers

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have achieved sums in six figures by Raffe. Hyman Raffe's criminal contempt conviction is, apparently, thereby nullified. His lawyer goes to jail. He buys his way out of a criminal conviction. Openly, insofar as the attorney-prosecutors are concerned.

(15) Raffe and Raffe's lawyer, George Sassower, Esq., actively misrepresented the true facts of the Puccini Clothes Ltd. litigation to Polur. But the Courts smile on Raffe as he has disgorged enormous sums of monies to private-prosecutor attorneys. But obloquy is heaped on Polur when he claims the rights due the meanest, most ignominious defendant charged with the most revolting of crimes. Raffe's conviction is mystifyingly annulled: Polur's is affirmed. Polur remains prey to the false charges that were asserted against him without proof, without confrontation, without evidence under oath, without evidence at all, without hearing or trial. Through it all this Court sits silent: "justice"is served in this scenario if Polur is jailed and robbed of his good

name without accusatory instrument, trial or proof. Merely on perjured affidavits.

The Undrlying Premise

(15A) Feltman, Karesh & Major, Esqs., by way of Donald F. Schneider, Esq., filed the motion to hold Sam Polur, Esq., in Criminal Contempt of Court with full knowledge the said Attorney had not served the summons alleged to have been in violation of the Order of Justice Gammerman. It should prove instructive to trace the ambulatory route taken to procure this criminal conviction and jailing of an honorable man and an Attorney meriting respect:

B. Feltman, Karesh & Major, Esqs., submitted as an exhibit in support of their motion the same summons that Michael J. Gerstein, Esq., attorney representing Kreindler & Relkin, P.C., claimed and affirmed was served upon him personally in Supreme Court New York County by George Sassower, Esq., on April 10, 1985; which summons gave rise to Kreindler & Relkin's motion to hold Hyman Raffe and George Sassower, Esq., in Criminal Contempt of Court.

C. Feltman, Karesh & Major, Esqs., never

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produced the alleged summons served upon them allegedly by Sam Polur, Esq. They instead submitted, as their Exhibit "B", the summons that Geroge Sassower, Esq., had served upon Michael J. Gerstein, Esq., to support their motion to hold Sam Polur in Criminal Contempt, dated April 11, 1985.

D. The summons annexed thereafter as Exhibit "B" of Feltman, Karesh & Major's April 11, 1985 motion to hold Sam Polur, Esq. in Criminal Contempt bears the initials of Michael J. Gerstein, Esq., ("MJG"), with a hand-written notation: "---Rec'd in Ct. 4/10/85 MJG--"

E. This clearly demonstrates the intrinsic fraud perpetrated on the Court and on Sam Polur, Esq., in procuring an unlawful Criminal Conviction against Sam Polur, Esq.

F. On page 5 of Kreindler & Relkin's ("K&R") April 30, 1985 motion to Raffe and Sassower in Criminal Contempt of Court, Michael J. Gerstein, Esq., states that "a bare summons" (copy annexed as Exhibit "B") was

served on him on April 10, 1985 by George Sassower, Esq. The summons has "M.J.G.", the initials of Michael J. Gerstein, Esq., handwritten on it.

G. Feltman, Karesh & Major ("FK&M"), by Donald F. Schneider, Esq., annexed the exact same summons to their motion to hold Sam Polur, Esq. in Criminal Contempt. They also filed the same summons, with Michael J. Gerstein's initials on it, as Exhibit "E" in their affidavit in opposition to an Application for a Stay of Justice Klein's Order, dated July 3, 1985. This was, once again, the same summons that George Sassower had served on K&R.

H. Michael J. Gerstein, Esq., conclusively demonstrates that the summons in question was served upon him (Gerstein) by Sassower, and not upon Scheider by Polur! (See, e.g., Gerstein's affidavit in opposition to Raffe's motion to reargue, dated August 8, 1985, page 7, par.7; and Gerstein's affidavit in opposi-

tion to an application for a stay of Justice Klein's Order, page 6, dated July 3, 1985, citing Exhibit "C"). Again, the initials of Michael J. Gerstein are on the summons, proving the particular summons in question was served on K&R, by Sassower, and not on FK&M by Polur.

I. Additonally, Hyman Raffe and Ira Postel, Esq., in their affidavits in support of a motion to reargue, clearly and unequivocally state that the summons in question which commenced the action was served by George Sassower.

J. Your movant is also in receipt of a recent communication from Edward Weissman,Esq., for Feltman, Karesh, Major & Farbman, Esqs., successor firm to FK&M, to the effect that the Hon. Ira Gammerman, J.S.C., had, as recently as March 11, 1986 Ordered that a related proceeding by Sam Polur could not be maintained unless permission is granted by Justice Gammerman, allegedly pursuant to his Order of January 23, 1985.

K. Such admonition was and is a patent falsehood. It is merely another attempt to

confuse and mislead the Court. The said Order of Justice Gammerman, as this movant reads it, directly precludes George Sassower, Esq. and anyone acting as his agent, on his behalf, etc., from filing motions, lawsuits, pleading against said Lawfirm. Nowhere in the Order does it mention Sam Polur. It indeed does not preclude Sam Polur, Esq. from acting "defensively" on his own behalf, or to clear his name which has been sullied by FK&M.

L. Furthermore, it is instructive that Justice David Saxe on virtually the same papers presented by FK&M and Donald F. Schneider, Esq., to Justice Klein, PRIOR TO JUSTICE KLEIN'S RULING AND ORDER, and known to Justice Klein, FK&M and Donald F. Schneider, refused to hold Sam Polur, Esq. in Criminal Contempt for serving that summons, if one had been served by him, because there was no proof "beyond a reasonable doubt" that Polur served it in "wilfull disobedience to a lawful mandate!"

M. Surely, there cannot be a finding of proof beyond a reasonable doubt that Polur served

the summons in said action in wilful disobedience of a lawful mandate of the Court because the summons within was not served by Polur! FK&M knowingly, deliberately and fraudulently placed before a Justice of the Supreme Court of the State of New York false and misrepresenting statements in regards to Sam Polur, Esq's alleged conduct, and placed before the Court a document that they knew had never been served by Sam Polur, Esq!

A Wrong That Shocks The Conscience

(16) Polur, in his coram nobis memorandum cited mearly 100 authorities for the proposition that a criminal contempt conviction must be based on a special proceeding, that such had to be by state action as with all criminal charges, that Polur had a constitutional right to an accusatory instrument and strict proof of the allegations levied against him. But neither this Court nor Justice Klein are compelled to comment, maintaining a cool silence as Polur's constitutional rights are ravaged.

(17) Truly, this is a case which schocks the conscience. Polur is bereft of rights. For

all the State's Judicial Tribunals care, he sits like Captain Dreyfus in exile. Through it all, through George Sassower's falsely contending he represented Polur, through Polur's being condemned and imprisoned without service upon him of a single piece of paper, through the Constitutional wrongs which have been dealt Polur, and that have been laid before this Court in this proceeding and two others, the Court sits silent.

(18) When the Attorney whom the Supreme Court of the United States cited as their sole footnoted authority in Cuyler v. Sullivan, 446 U.S. 335, 344 (1980), a case which is the most fundamental ruling on the imperative duties of "retained" counsel; when the Attorney who, as a private citizen achieved the addition of two years to the probation sentence against Spiro Agnew, twice Vice President of the United States and who, effectively, culminated his overt pro-Arab-oil, anti-Israel public and private stance through the United States District Court for

the District of Baltimore, in 1976; when the Attorney who succeeded in convincing the United States Court of Appeals for the Fifth Circuit that Feodore Federenko, subsequently deported to Russia and now, allegedly, there sentenced to execution for Nazi collaboration as a Wartime Death Camp guard in Treblinka, Poland's Concentration Camp which executed some one and a half million prisoners - that the U.S. District Court, Roettger, J., had, effectively, usurped the prerogative of the President by exercising the Dispensing Power which exclusively resides in the Executive by "forgiving" Fedorenko for his perjury in gaining admittance to the United States in 1950; when the Attorney who, for the past two years has served, voluntarily, as an Arbitrator in the Small Claims part of the Civil Court and for a year served at night as teacher to Sing Sing inmates in Criminal Law and Domestic Relations Law, as a volunteer; who has in his 23 years of active practice as an Attorney directly assisted more than one hundred persons, impoverished

or otherwise in desperate straits, without one cent in fees as a matter of practice and simple morality -- is "convicted" without a trial, without an accusatory instrument, without any testimony under oath, without charges to which to respond, and sentenced to jail and imprisoned for the full 30-day term "found" in an "Order" facially a "civil contempt" Order, to wit, impregnated with civil contempt language and which orders that private-attorney prosecutors be paid fines personally -- when all this occurs before one of the most-renowned state Courts in the United States, in the State of New York, we must all weep for shame. All the basic issues cited herein were apparently overlooked by this Appellate Judicial Tribunal.

(19) Somehow, inexplicably, this Court has been not fully informed of the classic fundamentals intrinsic to this case. Clearly, had the meanest, dirtiest criminal committed a crime violating humanity, this Court would insure the civilized and Constitutional bulwarks were

afforded the accused. Every Charter of Liberty, from the Magna Carta, to ancient Codes, to our earliest State and Federal Charters of Liberty would be invoked. This Court would speak courageously and firmly. Rights would not be trampled on. Yet here an honored and honorable member of the Bar of this Court is subjected to the crunch of the oppressor. The Court has been blind-sided. It could not have read the formidable petition and briefs duly submitted herein. Failure to deny one single allegation spawned-by-blood herein cannot be ignored, or judicially buried. This is not merely a case of First Impression. Its Constitutional resolution must make it one of Lasting Impression. "Gideon's" Trumpet" was one National clarion call. The momentous issues in this case can prove to be another, even more piercing resolve for Free Men in a Free and Decent Society.

August 30, 1986. Respectfully submitted,

S/
SAM POLUR
Attorney, Pro Se

SUPREME COURT OF THE STATE OF NEW YORK, In-
Dividual Assignment PART 2

at the Courthouse thereof, 60 Centre Street,
New York, New York 10007

P R E S E N T :

Hon. ALVIN F. KLEIN,
Justice

HYMAN RAFFE,

-against-

XAVIER RICCOBONO, et al.,

July 1, 1986

No. 78 on Calendar of 6/2/86

Notice of Motion — Papers Numbered 1-3

...

Filed Papers 4

Upon the foregoing papers this motion by Sam Polur,Esq. for an order pursuant to Criminal Procedure Law §440.10(1)(a),(b), (g), and (h) vacating the order of this court dated June 26, 1985 insofar as it relates to him is denied. The court has carefully reviewed all of the papers submitted herein, including the decision by the

Appellate Division and other courts in this matter, and finds that movant has failed to establish any grounds for the relief requested.

Dated: June 23, 1986

s/ A.F.K.,
J.S.C.

County Clerk's Number: 9522/1985

NEW YORK STATE COURT OF APPEALS

1. Mo. No. 1171 SSD 158		
HYMAN RAFFE,		
Plaintiff-Appellant,	:	DECISION COURT
GEORGE SASSOWER, Esq., and SAM POLUR, Esq.,	:	OF APPEALS -
Appellants,	:	NOVEMBER 26, 1985
XAVIER C. RICCOBONO, et al.,	:	
Respondents.	:	

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

Decision Court of Appeals

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on November 26, 1985.

Present - Hon. Theodore R. Kupferman, Justice Presiding,
Joseph P. Sullivan,
David Ross,
Arnold L. Fein,
Ernst H. Rosenberg, Justices.

- X

Hyman Raffe,
Plaintiff-Appellant, : M-5163
George Sassower,Esq. and Sam Polur, Esq.,
Appellants,
Xavier C. Riccobono, Donald Diamond, Feltman, Karesh & Major, Esqs. and Kreindler & Relkin, P.C.. : [Appeal No. 24069]
Defendants-Respondents. :

- - - - -

Hyman Raffe,
Plaintiff-Appellant, :
George Sassower, Esq.,
Appellant, :
-against-
Kreindler & Relkin, P.C., HOn. Walter M. Schackman, "John Doe", and "John Roe", names ficticious, persons intended to be those who communicated with the Court, ex parte, :
Defendants-Respondents. :

- - - - -

Hyman Raffe, :
Plaintiff-Appellant,
George Sassower, Esq., :
Appellant,
-against- :

Donald B. Relkin, Esq., Michael J. Gerstein, Esq., Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr, Esq., individually and as Executors of the Will of Milton Kaufman,

Defendants-Respondents.

The above-named appellent Sam Polur, Esq., having moved for reargument of or leave to appeal to the Court of Appeals from this Court's order entered on September 17, 1985,

NOW, upon reading and filing the notice of motion, with proof of due service thereof, and the papers filed in support of said motion and the papers filed in opposition or in relation thereto; and due deliberation haveing been had thereon,

IT IS ORDERED that the motion be and the same hereby is denied in its entirety, with $20 costs.

E N T E R,

HAROLD J. REYNOLDS,
Clerk.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department; in the County of New York, on September 17, 1985

Present -- Hon. Theodore R. Kupferman, Justice Presiding
Joseph P. Sullivan
David Ross
Arnold L. Fein
Ernst H. Rosenberger, Justices.

HYMAN RAFFE,
Plaintiff-Appellant,
George Sassower, Esq. and Sam Polur, Esq.,
Appellants,
Xavier C. Riccobono, Donald Diamond, Feltman, Karesh & Major, Esqs. and Kreindler & Relkin, P.C.,
Defendants-Respondents.

- - - -

Hyman Raffe,
Plaintiff-Appellant,
George Sassower, Esq., 24069
Appellant,
-against-
Kreindler & Relkin, P.C., Hon. Walter M. Schackman, "John Doe", and "John Roe", names fictitious, persons intended to be those who communicated with the Court, ex parte,
Defendants-Respondents.

- - - -

Hyman Raffe,
Plaintiff-Appellant,
George Sassower, Esq.,
Appellant,
-against -
Donald B. Relkin, Esq., Michael J. Gerstein, Esq., Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr, Esq., individually and as Executor of the Will of Milton Kaufman,
Defendants-Respondents.

APPEAL NO. 24069 CONTD.

An appeal having been taken to this Court by the above-named appellants from an order of the Supreme Court, New York County (Alvin Klein, J.), entered on July 1, 1985,

And said appeal having been argued by George Sassower of counsel for appellants, by Donald F. Schneider of counsel for respondent Feltman, Karesh & Major, Esqs,, and by Michael J. Gerstein of counsel for respondents Citibank, Barr, Kreindler & Relkin, Donald Relkin and Michael J. Gerstein; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same hereby is affirmed, without costs and without disbursements.

ENTER:

HAROLD J. REYNOLDS

Clerk.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

----------X

HYMAN RAFFE,

Plaintiff,

Index No.
9522-1985

-against-

XAVIER RICCOBONO, DONALD DIAMOND,

FELTMAN, KARESH & MAJOR, Esqs., and
KREINDLER & RELKIN, P.C.,

Defendants.

----------X

HYMAN RAFFE,

Plaintiff,

-against-

KREINDLER & RELKIN, P.C., Hon. WALTER
M. SCHACKMAN, "JOHN DOE", and "JOHN ROE",
names fictitious, persons intended to be
those who communicated with the Court,
ex parte,

Defendants.

----------X

HYMAN RAFFE,

Plaintiff,

-against-

DONALD B. RELKIN, Esq., MICHAEL J.
GERSTEIN, Esq., KREINDLER & RELKIN, P.C.,
CITIBANK, N.A. and JEROME H. BARR, Esq.,
individually and as Executors of the
Will of Milton Kaufman,

Defendants.

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S I R S :

PLEASE TAKE NOTICE, that Hyman Raffe, Goerge Sassower, and Sam Polur hereby appeal

to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department from an Order of the Supreme Court of the State of New York, County of New York, dated June 26, 1985, entered July 1, 1985 and each and every part of said Order.

Dated: July 2, 1985

Yours, etc.,

GEORGE SASSOWER, Esq.
Attorney for Hyman Raffe
and pro se
2125 Mill Avenue,
Brooklyn, New York 11234
718-444-3403

SAM POLUR, Esq.
Attorney pro se.
35 Montgomery Street
New York, New York 10002
212-608-7749

TO: Hon. Robert Abrams
Kreindler & Relkin, P.C.
Feltman, Karesh & Major, ESQS.

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, New York on the 26th day of June 1985

P R E S E N T :

Hon. Alvin F. Klein,

Justice.

HYMAN RAFFE,

Plaintiff,

-against-

XAVIER C. RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, ESQ. and KREINDLER & RELKIN, P.C.,

Defendant.

JUL 1 1985

(Action No. 1)

Index No. 9522/85

ORDER

HYMAN RAFFE,

Plaintiff,

-against-

KREINDLER & RELKIN, P.C., Hon. WALTER M. SCHACKMAN, "JOHN DOE", and "JOHN ROE", names fictitious, persons intended to be those who communicated with the Court, ex parte,

Defendants.

(Action No. 2)

HYMAN RAFFE,

Plaintiff,

-against-

DONALD B. RELKIN, ESQ., MICHAEL J. GERSTEIN, ESQ., KREINDLER & RELKIN, P.C., CITIBANK, N.A., and JEROME H. BARR. ESQ., individually and as Executors of the Will of Milton Kaufman,

Defendants.

(Action No. 3)

Kreindler & Relkin, P.C., defendant in Actions No. 1 and Action No. 2; and Donald B. Relkin, Michael J. Gerstein, Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr individually and as Executors of the Will of Milton Kaufman defendants in Action No. 3 having moved for: a) An order pursuant to CPLR 3211(a)1, 3211(a)3 and 3211(a)7 dismissing this action or alternatively permanently staying the action as being brought in violation of the Order of Justice Gammerman dated January 23, 1985; b) An order holding George Sassower and Hyman Raffe in three counts of criminal contempt of Court on the grounds that in commencing each of these three actions they have flagrantly and deliberately violated the injunction issued by Justice Gammerman, which injunction permanently enjoined and restrained George Sassower and Hyman Raffe and anyone acting in concert or cooperation with either of them from filing or serving any further lawsuits against any of the Movants arising out of the enforcement

of Hyman Raffe's guarantees; c) awarding to the Movants damages including reasonable attorneys' fees which resulted from the violation of Justice Gammerman's injunction by Hyman Raffe and Goerge Sassower, pursuant to Judiciary Law §773 and the prior order of this Court which held that "future motions by Messrs. Sassower and Raffe should be examined in light of the well established exception to the American Rule that attorneys' fees are recoverable in response to vexatious suits and litigation commenced in bad faith"; and

Feltman, Karesh & Major, defendant in Action No. 1, having moved for an order:

(i) permanently staying and enjoining the prosecution of this action against defendant Feltman, Karesh & Major in accordance with this Court's permanent injunction order of January 23, 1985 (Gammerman, J.) (the "Permanent Injunction Order"); or alternatively,

(ii) dismissing this action pursuant to CPLR 3211(1) 1,3 and 5 as barred by the Permanent Injunction Order; and

(iii) punishing attorney George Sassower, plaintiff Hyman Raff and Samuel Polur, who served the Summons with full knowledge of the Permanent Injunction Order, as and for a criminal contempt of court on the grounds that in serving the Summons and in commencing this action they have flagrantly and deliberately violated the Permanent Injunction Order, which Order, inter alia, permanently enjoined and restrained George Sassower and Hyman Raffe and anyone acting in concert or cooperation with either or both of them filing or serving any further lawsuits against Feltman, Karesh & Major, arising out of or relating to, inter alia, the judicial dissolution, the receivership of Puccini Clothes, Ltd. or the representation of the Receiver by Feltman, Karesh & Major; and

(iv) awaring to Feltman, Karesh & Major

damages, including reasonable attorney;s fees, which resulted from the violation of the aforesaid Order by George Sassower, Hyman Raffe and Samuel Polur, pursuant to Judiciary Law, §773 and the prior Order of this Court which held that "future motions by Messrs. Sassower and Raffe should be examined in light of the well-established exception to the American rule that attorneys' fees are recoverable in response to vexatious suits and litigations commenced in bad faith"; and

(v) for such other, further and/or different relief as to this Court may seem just and proper:

NOW, upon reading and filing the Notice of Motion of Kreindler & Relkin, P.C., dated April 30, 1985, the affidavit of Michael J. Gerstein, duly sworn to on April 30, 1985, and the exhibits annexed threto; the affidavit of personal service of the Notice of Motion on Hyman Raffe of Roger Dougherty, sworn to on May 13, 1985; the affidavit of personal service of the

Notion of Motion on George Sassower of Roger Dubin sworn to on May 6, 1985, all in support of Kreindler & Relkin, P.C.'s motion, and upon the Notice of Motion of Feltman, Karesh & Major dated April 11, 1985, the affidavit of Donald F. Schneider, duly sworn to on April 11, 1985, and the exhibits annexed thereto; the affidavit of service of the Notice of Motion on George Sassower of Donald F. Schneider sworn to on April 19, 1985; the affidavit of service of the NOtice of Motion on Samuel Polur of Donald F. Schneider, sworn to on April 19, 1985; the Supplemental Affirmation of Donald F. Schneider, dated May 6, 1985 all in support of Feltman, Karesh & Major's motion, and said motion having regularly come on to be heard for oral argument before the Honorable Alvin F. Klein at Special Term Part 1 of this Court on May 29, 1985; and after hearing Kreindler & Relkin, P.C. by Michael J. Gerstein, Esq., and Feltman, Karesh & Major by Donald F. Schneider, Esq., in support of the motions, and Sam Polur, Esq., on behalf of Hyman Raffe, George Sas-

sower and Sam Polur in opposition thereto.

And due deliberation having been had thereon; and Hyman Raffe, George Sassower and Sam Polur, having commenced these actions and served the summonses in wilful and deliberate violation of an order of Justice Gammerman dated January 23, 1985, which Order permanently enjoined commencement of actions such as these three, which were commenced with full knowledge of the said Order, and the conduct of Hyman Raffe, George Sassower and Sam Polur having been calculated to and having defeated, impaired, impeded and prejudiced the rights of defendants Kreindler & Relkin, P.C., in Action No. 2, and Donald B. Relkin, Esq., Michael J. Gerstein, Esq., Kreindler & Relkin, P.C., Citibank, N.A. and Jerome H. Barr, Esq., individually and as Executors of the Will of Milton Kaufman in Action No. 3; and this Court having rendered a decision dated June 6, 1985;

Now, on motion of Kreindler & Relkin, P.C. and Feltman, Karesh & Major, it is

ORDERED, that motions Nos. 21 & 178 on the calendar of May 29, 1985 are consolidated for disposition; and it is further ORDERED that the motions are granted, and it is further

ORDERED, that so much of defendants' motions as seek to dismiss these actions pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR 3211(a)5 and CPLR 3211(a)7 are granted; and it is further

ORDERED, that Action No. 1 is dismissed pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR (a)5, and CPLR 3211(a)7 as to defendants Feltman, Karesh & Major Esqs., and Kreindler & Relkin, P.C.; and it is further

ORDERED, that Action No. 2 is dismissed pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR (a)5, and CPLR 3211(a)7 as to defendant Kreindler & Relkin, P.C.; and it is further

ORDERED, that Action No. 3 is dismissed pursuant to CPLR 3211(a)1, CPLR 3211(a)3, CPLR (a)5, and CPLR 3211(a)7 as to all defendants therein; and it is further

ORDERED, that the motions of Kreindler & Relkin, P.C. to punish Hyman Raffe and George Sassower for criminal contempt, and the motion of Feltman, Karesh & Major to punish George Sassower and Samuel Polur for a criminal contempt, are granted in all respects; and it is further

ORDERED AND ADJUDGED, that Hyman Raffe, George Sassower and Samuel Polur are guilty of criminal contempts of court for having wilfully and deliberately violated the Order of Justice Gammerman, dated January 23, 1985, which Order permanently enjoined commencement of the within actions; and it is further

ORDERED, that pursuant to the Judiciary Law of the State of New York, by reason of such criminal contempt of court, Hyman Raffe, George Sassower, and Samuel Polur shall each be imprisoned for a period of thirty (30) days in the jail of the county of this Court, and George Sassower shall pay a fine of $250.00 to each of Feltman, Karesh & Major, 55 East 52nd Street, New York, New York, Kreindler & Relkin, P.C., Donald

B. Relkin, Esq., Michael J. Gerstein, Esq., 500 Fifth Avenue, New York, New York and Citibank, N.A. and Jerome H. Barr, individually and as Executors of the Will of Milton Kaufman, One Citicorp Center, New York, New York, Hyman Raffe shall pay a fine of $250.00 to each of Feltman, Karesh & Major, 55 East 52nd Street, New York, New York, Kreindler & Relkin, P.C., Donald B. Relkin, Esq., Michael J. Gerstein, Esq., 500 Fifth Avenue, New York, New York and Citibank, N.A. and Jerome H. Barr, individually and as Executors of the Will of MIlton Kaufman, One Citicorp Center, New York, New York and Sam Polur shall pay a fine of $250.00 to Feltman, Karesh & Major, 55 East 52nd Street, New York, New York within ten (10) days after personal service of a certified copy of this Order upon them; and it is further

ORDERED, that the Sheriff of any County in the State of New York wherein Hyman Raffe, George Sassower and Samuel Polur, or any of

them may be apprehended, is directed to take him or them into his custody and detain him or them in the Civil Jail or other appropriate facility until the completion of their or his term of thirty days or until he or they shall be otherwise discharged, according to law; and it is further

ORDERED, that those branches of the motions seeking recovery of damages, including attorneys' fees incurred as the result of defending these actions, are granted to the extent that the matter of evaluating and apprising the reasonable value of such damages and attorneys' fees is referred to Trial Term, Part 10 for assignment to hear and report with recommendations and that pending receipt of the report, final determination of those portions of the motions is held in abeyance. Counsel are directed to forthwith serve a conformed copy of this Order or the clerks of the office of the

Referees for the purpose of arranging a calendar date.

E N T E R

s/ A.F.K.

J.S.C.

F I L E D
July 1, 1985
County Clerk's Office
New York

SUPREME COURT OF THE STATE OF NEW YORK, SPECIAL TERM PART 1, NEW YORK COUNTY

at the Courthouse thereof, 60 Centre Street, New York, New York, 10007.

Present:

Hon. ALVIN F. KLEIN
Justice

HYMAN RAFFE

-against-

XAVIER C. RICCOBONO, et al.

[Filed June 7, 1985]

The following papers numbered 1 to 5 read on this motion, Argued and submitted

No 21 on Calendar of May 29, 1985

Notice of Motion - Order to Show Cause and Affidavits Annesed, Exhibits A-J

Answering Affidavit in Opposition

[PAPERS NUMBERED
1 - 4
5]

Motion disposed of in accord with the accompanying memorandum decision

DATED: June 6, 1985

County Clerk's Number: 9522/85

s/ A.F.K.
J.S.C.

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SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART 1

HYMAN RAFFE,

Plaintiff,

-against-

XAVIER C. RICCOBONO, et al.,

Defendants.

: Index No. 9522/85
: Cal.No. 21
: Cal. Date 2/29/85
: [Filed June 7, 1985]

KLEIN, ALVIN F., J.:

Motions numbered 21 and 178 on the calendar of May 29, 1985 are consolidated for disposition.

Motion no. 178 is by various defendants in three separate actions seeking an order pursuant to CPLR 3211 dismissing these actions or, in the alternative, permanently staying them on the grounds that they were commenced in violation of the permanent injunctive order of Justice Gammerman dated January 23, 1985; for an order pursuant to §§750(3) and 751 of the Judiciary Law punishing plaintiff Raffe and his attorney, George Sassower,

for criminal contempt of court for deliberate violation of the said order dated January 23, 1985; and for an order pursuant to §773 of the Judiciary Law awarding movants damages, including reasonable attorneys' fees, resulting from Raffe's and Sassower's violation of the January 23, 1985 order.

Motion no. 21 is by a defendant in another action seeking similar relief against Sassower and against Samule Polur, the attorney who served the summons in that action with full knowledge of the January 23, 1985 order of Justice Gammerman.

Criminal contempt is established when there is a clear and definit court order, and the contemnor knows of the order and willfully disobeys it (see §750 Judiciary Law; State v. Congress of Racial Equality, 92 AD2d 815).

It is evident that the order of Justice Gammerman dated Janaury 23, 1985 enjoined commencement of the within actions. It is also apparent that these actions were brought sub-

sequent to the issuance of that order and that they were brought by and served by persons with knowledge of that order.

Upon a careful reading of all of the papers submitted herein and after oral argument before this court on May 29, 1985, it is clear to this court that plaintiff Raffe and the attorneys Sassower and Polur have willfully and deliberately flouted the aforesaid order of Justice Gammerman. Their flagrant disregard of the order is an affront to the dignity of the court and warrants imposition of criminal contempt sanctions.

Accordingly, those parts of the motions seeking orders punishing Raffe, Sassower and Polur for criminal contempt are granted.

Those branches of the motions seeking recovery of damages including attorneys' fees incurred as a result of defending these actions are granted to the extent that the issue of the reasonable value of such damages and attorneys' fees is hereby referred to Trial Term Part 10 for

assignment to hear and report with recommendations. Pending receipt of the report, final determination of these portions of the motions shall be held in abeyance. Counsel are hereby directed to file a copy of this order with the Office of the Referee, Room 308M, 60 Centre Street, for the purpose of obtaining a calendar date.

Inasmuch as commencement of these actions had been barred by the order of Justice Gammerman dated January 23, 1985, those portions of the motions seeking orders dismissing these actions are granted with prejudice.

Settle order.

s/A.F.K.

J.S.C.

Dated: June 6th, 1985.

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SUPREME COURT : NEW YORK COUNTY

HYMAN RAFFE,

Plaintiff,

-against-

XAVIER C. RICCOBONO, DONALD DIAMOND, FELTMAN, KARESH & MAJOR, Esqs., and KREINDLER & RELKIN, P.C.,

Defendants.

X Index No.

Plaintiff designates New York County as the Place of trial

The basis of venue is

Defendant's place of business

SUMMONS with NOTICE

Plaintiff resides at

County of

To the above named Defendant

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance , on the Plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear of answer, judgment will be taken against you by default for the relief demanded herein.

Dated, April 10, 1985

Defendant's Address:

GEORGE SASSOWER, Esq.
Attorney(s) for Plaintiff
Office and Post Office Address

2125 Mill Avenue,
Brooklyn, New York 11234
718-444-3403

Notice: The nature of this action is violation of Judiciary Law, deceit, obstruction of justice

The relief sought is damages

filed in Ct 4/10/85 mpc

Upon your failure to appear, judgment will be taken against you by default for the sum of $10,000,000 with interest from 19 and the costs of this action

BEST AVAILABLE COPY

(10)

: 105—Summons with Notice, Blank Court. Personal Service. 1-79

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SUPREME COURT : NEW YORK COUNTY

HYMAN RAFFE,

Plaintiff

against

XAVIER C. RICCOBONO, DONALD DIAMON, FELTMAN, KARESH & MAJOR, Esqs., and KREINDLER & RELKIN, P.C.

Defendant

Index No.

Plaintiff designates New York County as the place of trial

The basis of the venue is Defendant's place of business

Summons with Notice

Plaintiff resides at

County of

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated, April 10, 1985
Defendant's address

GEORGE SASSOWER, Esq.
Attorney(s) for Plaintiff
Office and Post Office Address
2125 Mill Avenue,
Brooklyn, New York, 11234
:718-444-3403

Notice: The nature of this action is violation of Judiciary Law, ~~fraud~~ obstruction of justice.

The relief sought is damages

Upon your failure to appear, judgment will be taken against you by default for the sum of $ ~~500,000~~ 10,000,000 with interest from 19 and the costs of this action.

Served by George Sassower, Esq. on
Copy of Original Summons
EXHIBIT

filed in ct 4/10/85 mpc

Exhibit C Exhibit D Exhibit E Exhibit F